

TIER 3 PROTOCOL

Interrelationship of Tier 2 and Tier 3

Tier 3 is referenced on pages 57 and 58 of the CALFED August 2000 Record of Decision (ROD) in the following context:

ESA Commitments

As part of the MSCS Conservation Agreement and the FWS and NMFS biological opinions, the CALFED Agencies have provided a commitment, subject to specified conditions and legal requirements, that for the first four years of Stage 1, there will be no reductions, beyond existing regulatory levels, in CVP or SWP Delta exports resulting from measures to protect fish under FESA and CESA. This commitment is based on the availability of three tiers of assets:

Tier 1 is baseline water, provided by existing regulation and operational flexibility as described above. The regulatory baseline consists of the biological opinions on winter-run salmon and delta smelt, 1995 Delta Water Quality Control Plan, and 800 TAF of CVP Yield pursuant to CVPIA Section 3406(b)(2).

Tier 2 consists of the assets in the EWA combined with the benefits of the ERP and is an insurance mechanism that will allow water to be provided for fish when needed without reducing deliveries to water users. (These assets are shown in the table on page 58 of the ROD). Tier 1 and Tier 2 are, in effect, a water budget for the environment and will be used to avoid the need for Tier 3 assets as described below.

Tier 3 is based upon the commitment and ability of the CALFED Agencies to make additional water available should it be needed. It is unlikely that assets beyond those in Tier 1 and Tier 2 will be needed to meet ESA requirements. However, if further assets are needed in specific circumstances, the third tier will be provided. In considering the need for Tier 3 assets, the fishery agencies will consider the views of an independent science panel. Although the CALFED Agencies do not anticipate needing access to Tier 3 of water assets, the CALFED Agencies will prepare an implementation strategy for Tier 3 by August 2001, establishing a timely scientific panel process and identifying tools and funding should implementation of Tier 3 prove necessary.

Tier 3 Protocols

1. **Tier 3 is not an operational reserve for Tier 2.** The CALFED Agencies agree that Tier 3 actions are separate from EWA and that the EWA should not rely upon the existence of Tier 3 assets in its planning or operations. Tier 3 is a fail-safe device, intended to be used only when Tier 1 and Tier 2 are insufficient to avoid jeopardy to the continued existence of an endangered or threatened species.
2. Tier 3 assets will be used when: (1) EWA assets are exhausted (see Item 3); and (2) the Management Agencies determine that jeopardy due to project operations will occur unless additional measures are taken (see Item 4 below).
3. EWA assets are defined as exhausted when all real assets have been used and the limit on borrowing has been reached. The real assets include (1) the purchased assets that are being acquired for 2004; and (2) any operational assets that have been accrued or can reasonably be acquired in the near future. For 2004, the initial limit on borrowing has been established as 100 TAF. This amount represents the amount of water that could be extracted from groundwater in any single year. Additional borrowing may be developed through the year, but would be on a case-by-case basis.
4. The appropriate Management Agencies will make the determination that a species is near jeopardy if project operations are not modified. The Management Agencies will request and consider the views of an independent science panel. At a minimum, this science panel will consist of the two EWA science advisors who are expected to respond within 48 hours. If sufficient time is available, additional independent scientists may be consulted. The Management Agencies have the discretion to take action while awaiting feedback from the science panel.
5. **Tier 3 assets will be used to the extent available to compensate the Projects and water users for impacts to their water supply from actions taken to avoid jeopardy.** If all Tier 3 assets are used, and additional actions are needed to avoid jeopardy, ESA consultation regarding project operations will be re-initiated. The biological opinion on re-initiation will include reasonable and prudent alternatives necessary to avoid jeopardy. Actions to avoid jeopardy will not be limited by the “no harm” principle (i.e.: there is no commitment that all water supply losses can be fully mitigated).
6. **The State and Federal Projects will be responsible for making preparations for the activation of Tier 3.** DWR and USBR are responsible for making preparations for the activation of Tier 3, just as they are responsible for acquiring EWA assets. Such preparations could include the acquisition or identification of water purchase options that could be converted easily into water. The cost of exercising the options would be paid by the Tier 3 fund. The Project Agencies should work cooperatively with the EWAT and other CALFED-related water purchase programs in developing a Tier 3 purchase plan.